# STATE OF MICHIGAN

# COURT OF APPEALS

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| HARMONY MONTESSORI CENTER,<br><br>Petitioner-Appellant, | UNPUBLISHED<br>February 18, 2014 |
| v | No. 312856<br>Michigan Tax Tribunal |
| CITY OF OAK PARK,<br><br>Respondent-Appellee. | LC No. 00-370214 |

Before: MURPHY, C. J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Petitioner appeals as of right a Michigan Tax Tribunal (MTT) final opinion and judgment granting respondent's motion for summary disposition, in this property tax exemption case. Petitioner argues that the MTT erred by finding that there was no material question of fact whether petitioner was entitled to either an educational or charitable institution property tax exemption, pursuant to MCL 211.7n or MCL 211.7o. We agree, and we reverse and remand to the MTT for further proceedings.

"Petitioner must prove by a preponderance of the evidence that it is entitled to a property tax exemption." *OCLC Online Computer Library Ctr, Inc v Battle Creek*, 224 Mich App 608, 611; 569 NW2d 676 (1997). "In determining whether petitioner met this burden, we note that tax exemption statutes must be strictly construed in favor of the taxing unit." *Id.* at 611-612. "[W]hen statutory interpretation is involved, [an appellate court] reviews the [tax] tribunal's decision de novo." *Wexford Med Group v Cadillac*, 474 Mich 192, 202; 713 NW2d 734 (2006). Otherwise, our "review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record." *Sietsema Farms Feeds, LLC v Dep't of Treasury*, 296 Mich App 232, 236; 818 NW2d 489 (2012).

We review de novo the grant of a motion for summary disposition under MCR 2.116(C)(10). *Lakeview Commons LP v Empower Yourself, LLC*, 290 Mich App 503, 506; 802 NW2d 712 (2010). A motion under MCR 2.116(C)(10) "tests the factual support of a plaintiff's claim and is reviewed by considering the pleadings, admissions and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Id.* "Summary disposition is proper if there is 'no genuine issue regarding any material fact and the moving party is entitled to

judgment as a matter of law.' There is a genuine issue of material fact when 'reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party.'" *Id.* (citations omitted). On appeal, we consider only evidence properly presented to the trial court. *Id.*

## I. EDUCATIONAL EXEMPTION

To qualify for the educational institution exemption under MCL 211.7n, a petitioner must show, (1) it owns and occupies the property, (2) it is an educational institution, and (3) it occupies the building solely for the purpose for which it was incorporated. *Engineering Soc of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944), mod *Wexford*, 474 Mich at 203; see also *OCLC*, 224 Mich App at 612. To be an educational institution, the institution "must fit into the general scheme of education provided by the state and supported by public taxation," and must "make[] a substantial contribution to the relief of the burden of government." *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 755-756; 298 NW2d 422 (1980). In order to "make a substantial contribution", the institution must show that "if [it] were not in existence, then . . . a substantial portion of the student body who now attend that school [would and could] instead attend a State-supported [school.]" *David Walcott Kendall Mem Sch v Grand Rapids*, 11 Mich App 231, 240; 160 NW2d 778 (1968).

### A. GENERAL SCHEME OF EDUCATION PROVIDED BY THE STATE AND SUPPORTED BY PUBLIC TAXATION

Preschool and kindergarten programs fit into "the general scheme of education provided by the State and supported by public taxation." *David Walcott Kendall Mem Sch*, 11 Mich App at 237. Kindergarten programs are within the government's general scheme of education. The Michigan Constitution states, "[t]he legislature shall maintain and support a system of free public elementary and secondary schools as defined by law." Const 1963, art 8, § 2. MCL 388.1604(2) generally defines an elementary pupil as a student attending kindergarten through either sixth grade or eighth grade. The Legislature does not mandate that every school district provide a kindergarten program.[1] MCL 380.1147(1). However, the Legislature provides funding for school districts that offer kindergarten programs on a per pupil basis. MCL 388.1606(4); MCL 388.1701(5). The Legislature has clearly indicated through its extensive statutory references to, and funding of the programs, that kindergarten programs are included in the government's general scheme of education.

[1] In 1984, this Court found that a nonprofit institution offering daycare and vocational programs did not qualify for the educational exemption, pursuant to MCL 211.7n, because preschool and vocational programs were not mandated by the state. *Ass'n of Little Friends, Inc v Escanaba*, 138 Mich App 302, 308; 360 NW2d 602 (1984). However, pursuant to MCR 7.215(J)(1), this case is not binding authority. *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503, 539; 821 NW2d 117 (2012).

Preschool programs are also within the government's general scheme of education. Superficially, state-funded preschool programs are limited to a program for educationally disadvantaged children. See MCL 388.1632d and MCL 388.1632d(1), outlining the Great Start Readiness Program but limiting it to children who are "educationally disadvantaged," and within a narrow age range. However, an increasing emphasis is being placed on prekindergarten education. For a limited purpose, the Legislature broadened the definition of an elementary pupil to include children enrolled in a preschool program.[2] MCL 388.1604(2). MCL 388.1021 *et seq.* provides licensing requirements for parent cooperative preschools. The Board of Education is now issuing standards for prekindergarten childhood education, including curriculum guidelines for, and appointing committees to study, preschool programs. Even if the standards are not mandatory, they demonstrate that the government has adopted preschool education into its general scheme of education. Finally, even though the Great Start Readiness Program is limited to children who are "educationally disadvantaged," the program and funding indicate that the Legislature and the Board of Education generally recognize the importance of prekindergarten education. MCL 388.1632d(1). Therefore, preschool programs also fit into the government's general scheme of education.

## B. SUBSTANTIAL CONTRIBUTION TO THE RELIEF OF THE BURDEN OF GOVERNMENT

However, there is a substantial question of fact about whether "a substantial portion of the student body" could and would attend a state-funded elementary school or preschool.[3] *David Walcott Kendall Mem Sch*, 11 Mich App at 240. The tax tribunal determined that petitioner did not make a substantial contribution based solely on the number of children enrolled in petitioner's kindergarten or joint kindergarten and preschool programs. It failed to consider the children who were enrolled in petitioner's preschool program that would and could have attended the Great Start Readiness Program, and that would and could have attended a state-funded kindergarten program, even though they were enrolled in a Montessori preschool program. MCL 380.1147(1) and (2) allow a child who is five years old on December 1 of the enrollment year, to enroll in elementary school. MCL 388.1632d generally outlines the requirements for children to qualify for the Great Start Readiness Program. Children who are aged four qualify for the program. MCL 388.1632d(1). The lower court record does not contain

[2] This definition was broadened for the purpose of eligibility in the Universal Service Discount Program. This program provides discounted telecommunication services to qualifying schools and libraries. See http://www.michigan.gov/mde/0,4615,7-140-6530_21417-65134--,00.html (accessed December 1, 2013).

[3] Petitioner argues that the courts should not establish numerical thresholds in order to define what constitutes substantial contribution. We agree that there is no "bright line" threshold, either for a specific number or a specific percentage. However, determining the percentage of students who would and could attend a state-funded school does aid a court in determining if petitioner meets the "substantial portion of the student body" test. *David Walcott Kendall Mem Sch*, 11 Mich App at 240.

information regarding the ages of the preschool children or whether they could and would attend kindergarten or a Great Start Readiness Program preschool.

## II. CHARITABLE EXEMPTION

The property tax exemption for charitable institutions is governed by MCL 211.7o(1), which provides:

> Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.

The parties stipulated that petitioner owned the property and that it used the property solely for the purpose under which it was incorporated. Respondent also stipulated that petitioner is a nonprofit organization that does not discriminate in providing its educational[4] services, and its fees for its services did not exceed the amount required to provide the services. Therefore, the only issue remaining is whether petitioner is a charitable institution.

What constitutes a "charitable institution" is not defined by statute. Our Supreme Court has explained that "charity" is "a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, or relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government." *Wexford*, 474 Mich at 211 (citations and quotation marks omitted). The charitable nature of an institution should be evaluated by its "overall nature" rather than its "specific activities." *Id.* at 213.

Consistent with the above definition and prior case law, our Supreme Court provided a list of six factors to be considered when attempting to determine whether an institution is "charitable." *Id*. at 215. The parties explicitly or implicitly stipulated to most of them: petitioner is a non-profit organization, petitioner does not offer its services on a discriminatory basis, petitioner brings peoples' minds under the influence of education, and petitioner's fees did not exceed the amount required to provide its services. Indeed, it appears that petitioner raised funds through activities like fundraisers and operated at a net loss regardless. See *id.* The only truly contested factor was whether petitioner "is organized chiefly, if not solely, for charity." *Id*. The final "factor" is simply a statement that being a "charitable institution" does not depend on any particular monetary threshold. *Id*.

The proper test to determine whether an institution's overall nature is charitable is to see if "the organization's activities, taken as a whole, constitute a charitable gift for the benefit of the

[4] Respondent did not stipulate specifically that petitioner's services "brings people's minds or hearts under the influence of education." *Wexford*, 474 Mich at 215. However, respondent does acknowledge the educational nature of petitioner's services.

general public without restriction or for the benefit of an indefinite number of persons." *Mich United Conservation Clubs*, 423 Mich 661, 673; 378 NW2d 737. In that case, our Supreme Court held that the petitioner did not provide such a gift because its purposes and activities benefited only its own members and others with an active interest in the conservation of natural resources. *Id*. at 674. The Tax Tribunal found that petitioner was not a charitable institution because, although it would sometimes offer reduced or rescinded charges to some students on a case-by-case basis, it "does not offer free tuition to anyone who walks in the door." The Tax Tribunal found that petitioner was instead merely offering services for payment at the market rate for those services. We find that the Tax Tribunal's finding was based on a misunderstanding of *Wexford*.

In *Wexford*, our Supreme Court made clear that whatever was being provided by the institution under analysis did not need to be offered for *free*, or even necessarily at the significant financial loss sustained by the petitioner in that case. *Wexford*, 474 Mich at 216-217. We take the rule that there is no "monetary threshold of charity," *id*. at 215, to refer to either a specific number of dollars or a specific percentage of revenues or expenditures. Our Supreme Court noted that it had previously found a hospital "sufficiently charitable to entitle it to the privileges of the act when the charges collected for services are not more than are needed for its successful maintenance," even though the hospital largely charged for its services, albeit with numerous reductions or exemptions. *Michigan Sanitarium & Benevolent Ass'n v Battle Creek*, 138 Mich 676, 681-683; 101 NW 855 (1904). The consideration discussed in context in *Wexford* was whether the charity's services—whatever they might be—were available to anyone, in the context "of the type and scope of charity it offers." *Wexford*, 474 Mich at 213. The charity need not offer its services for free, but it must not discriminate within the group of "people who need the type of charity being offered." *Id*.

Consequently, the fact that petitioner charges for its services does not necessarily preclude it being a "charitable institution." Conversely, the fact that an institution may be operating at a loss at any given point in time does not automatically make it charitable; if the deficit is to be made up by those receiving the services, it would not be charitable, whereas if the deficit is *not* being made up by those receiving the services, it might be. *Wexford*, 474 Mich at 207-209, 217. It appears from the record so far developed that any member of the public[5] may obtain from petitioner more education than they are, strictly speaking, paying for. We conclude, therefore, that petitioner has established a genuine question of material fact whether it is a charitable institution.

## III. CONCLUSION

[5] We presume that there may be some qualifications that are simply necessary to the nature of the services provided, such as disciplinary issues or other reasons why any particular student might be unable to benefit from the services provided, but those qualifications would not necessarily be relevant to whether petitioner is charitable. See *Wexford*, 474 Mich 216 n 9.

Therefore, petitioner raised a genuine issue of material fact regarding petitioner's status as an educational institution, pursuant to MCL 211.7n; it has also raised a genuine issue of material fact regarding petitioner's status as a charitable institution, pursuant to MCL 211.7o.

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Amy Ronayne Krause